IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.7111 OF 2005

Mukhtar Ibrahim Velaskar & anr. ...Applicants
vs.
State of Maharashtra ...Respondent

Mr.Makarand Adkar i/b Mr.S.R.Ganbavale for the Applicants
Ms S.D.Shinde,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 27,2005

P.C.:

1. Heard Advocate for the Applicants and the learned A.P.P. for State. This application for grant of anticipatory bail has been filed by the Applicants apprehending arrest in connection with the offence punishable under Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the said Act of 1989). The offence is also registered under Section 506 of the Indian Penal Code. The first informant is one Bhalchandra Mahale who is the Sarpanch of Goregaon Gram Panchyat.

2. The allegation made in the F.I.R. is that on 7th October 2005, the Applicants along with one Husainmiya came to the Gram Panchyat office and entered the cabin of the Sarpanch where the first informant was sitting. The F.I.R. records that the application was made by the Applicant No.2 to the Village Panchyat for grant of no objection certificate for obtaining electricity supply to the building constructed by

the Applicant No.2. The allegation is that while the Applicants were in the cabin of the first informant, the Applicants intentionally insulted the first informant with intent to humiliate him. The first informant is claiming to be the member of "Burud" community. The prosecution has recorded the statements of two eye witnesses who have supported the first informant by setting out utterances of the Applicants in the cabin of the first informant.

3. The learned Counsel for the Applicants submitted that the bar created by Section 18 of the said Act of 1989 against grant of anticipatory bail will not be attracted as no case has been made out of commission of offence under the said Act of 1989. He, therefore, submitted that the Applicants are entitled to be enlarged on anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code). The learned A.P.P. opposed the application by pointing out that the F.I.R. prima facie discloses commission of offence under the said Act of 1989 and therefore, bar created by Section 18 of the said Act of 1989 will squarely apply.

4. I have considered the submissions. The learned Single Judge of this Court in a Judgment reported in 1995 (2) Mh.L.J. page 669 (Ramchandra Vs. State) held that where the first information report, statements recorded by the police under

Section 161 of the said Code and available material ex-facie do not disclose the ingredients constituting an offence under any of the provisions of the said Act of 1989, jurisdiction of the Court to grant anticipatory bail under Section 438 of the said Code cannot be said to have been taken away. This Court held that merely because the case has been so registered by the police under the said Act of 1989, application for grant of anticipatory bail should not be thrown out without finding out whether there are accusations of commission of offence under the said Act of 1989 or not and the Court should not shirk its responsibility of examining the appropriate cases where it is brought to the notice of the Court that ex-facie the accusation discloses no offence having been committed under the said Act of 1989. This Court has also observed that the correctness of the allegations is not required to be gone into and the only thing required to be seen is whether the allegations made in F.I.R. do constitute an offence under the said Act of 1989.

5. In the present case, the offence alleged is under Clause (X) of Sub Section 1 of the Section 3 which read thus :

"X intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled tribe in any place within public view;"

6. The offence of the intentional insult or intimidation must takes place at any place within the public view. A Division Bench of this Court has an occasion to consider the said provision in a Judgment reported in 2005 (6) LJSOFT (URC) page 7 (V.P.Shetty,Chairman of I.D.B.I. Ltd Vs. Sr.Inspector of Police, Cuffe Parade Police Station and another). In paragraph No.5 of the said decision the Division Bench has held thus :

"5. The plain reading of the complaint filed by the complainant undoubtedly prima facie discloses various accusations against the complainant by the petitioner in the name of the Schedule Castes and Schedule Tribes. It also prima facie discloses abuses having been uttered by the petitioner and addressed to the complainant on the ground of the complainant being a member of the Schedule Caste. However, as rightly submitted by the learned advocate for the petitioner, the complaint nowhere discloses those accusations having been made in a place within view. In various decisions apart from the decision of Bai @ Laxmibai, **this Court has time and again held that the expression "within public view" has specific meaning and in order to attract the provisions of law under Section 3 (1) (x) of the Atrocities Act, the acts amounting to insult or**

humiliation to the member of Schedule Castes or Schedule Tribes should be visible and audible to the public. Otherwise, it would not amount to an offence under the said provision of law.

. Considering the same and considering the allegations in the complaint which relate to the acts by the petitioner in the closed cabin of the petitioner and in the absence of any stranger, can hardly be said to be accusations by the petitioner to the complainant "within the public view". On this count itself, the petitioner is justified in contending that there was no case for recording the F.I.R. under the provisions of law comprised under Section 3(1) (x) of the Atrocities Act."

7. What has been held by the Division Bench is that the acts amounting to insult or humiliation or intimidation of the member of the Schedule Caste or Schedule Tribe should be visible and audible to the public. In the present case, even taking the accusation made in the F.I.R. as true and correct, the entire incident has taken place in the cabin of the Sarpanch of Village Panchyat. The reliance is placed by the prosecution on the statements of the two witness. The said two statements itself disclose that cabin of the Sarpanch appears to be a closed cabin having a door. Both the

witnesses have stated that they entered the cabin by opening the door and thereafter they heard what the Applicants have allegedly uttered. Following the decision of the of the Division Bench in case of V.P.Shetty (supra) and taking the accusation in the F.I.R. and other available material on record as it is, it is obvious that the alleged acts of insult or intimidation were not visible and audible to the public. Hence, no case is made out for commission offence under the said Act of 1989.

8. In my view, bar created by section 18 of the said Act of 1989 will not apply. The learned Sessions Judge has not at all considered this aspect of the matter.

9. Thus on plain reading of the F.I.R. and the material collected during the investigation, it is obvious that undue harassment will be caused to the Applicants if they are not granted pre-arrest bail. Hence application must succeed.

10. Hence I pass the following order :

i) In the event of the arrest of the Applicants in connection with C.R.No. II/10/2005 registered with Goregaon Police Station, Taluka Mangaon District Raigad the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.10,000/- (Rupees ten thousand only) each with one solvent

surety each in the like amount.

ii) The Bail is granted subject to condition that the Applicants will attend the concerned Police Station as and when called upon to do so till filing of the charge sheet and will cooperate for the purposes of investigation.

iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/investigating agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicants only till charge sheet is filed. Thereafter, they will be free to apply to the appropriate Court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this

order.

JUDGE